IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.463 OF 2007
IN
SUMMARY SUIT NO.2910 OF 2004

Shri Plavumkal Chacko Matthai. ..Plaintiff.

V/s.

Shri Dhinkara Bass & Ors. ..Defendants.

Mr.Rajesh Parab for plaintiff.

Ms.Sheetal Kadam for defendant Nos. 1 and 3.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 22, 2007.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. There is delay of 445 days in taking out this Motion. The only explanation offered in the affidavit in suppport of the Motion can be discerned from paragraph-14. According to the defendants, they came to know about the decree passed by this Court after the letter dated 3rd January, 2007 was served on the affiant on 11th January, 2007. The fact stated however, has been countered by the plaintiff in his reply affidavit by placing reliance on the legal notice sent by the Registered Post addressed to

each of the defendants dated 22nd November, 2005; informing them about passing of decree dated 17th October, 2005. The said legal notice has been duly served upon the defendants as can be seen from the acknowledgment produced on record. In other words, as back as in November, 2005, the defendants were made aware that the decree has been passed by this Court on 17th October, 2005. The present Motion however, has been taken out only in February, 2007. No explanation whatsoever, has been offered with regard to this lapse. Admittedly, the defendants have not filed any rejoinder affidavit to explain the stand taken by the plaintiff in the reply affidavit. Thus understood, there is no question of condoning delay of 445 days. The Motion deserves to be dismissed on the ground of latches and delay. Ordered accordingly.